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December 7, 2004

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Federal Communications Commission
Office of Secretary

NOTICE OF EX PARTE COMMUNICATION

Marlene H. Dortch, Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W., TW-A325
Washington, DC 20554

Re: WC Docket No. 04-313; CC Docket No. 01-338

Dear Ms. Dortch:

On December 7, 2004, Albert Kramer and Jacob Farber, on behalf of the American Public Communications Council ("APCC"), met with Jordan Goldstein of Commissioner Michael Copps' office.

We discussed the relationship of UNE-P to the payphone service provider ("PSP") market and whether CLECs are impaired in serving the PSP market. Attached is a copy of the handout given to Mr. Goldstein at the meeting, which summarizes the content of our discussion.

Sincerely,

Jacob S. Farber

Enclosure
cc: Jordan Goldstein

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The Need for UNE-P for the Payphone Exchange Service Market

WC Docket No. 04-313
Ex Parte Presentation
December 7, 2004

Albert H. Kramer
Jacob S. Farber

The payphone local exchange market is a distinct market with unique impairments for CLECs

- The Commission must consider material differences between the PSP market segment and other local service market segments
  - *USTA II* requires a granular analysis—where a market "differs decisively" from broader markets, the FCC must examine it independently
  - Section 276

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The payphone local exchange market is a distinct market with unique impairments for CLECs (cont.)

- CLECs are impaired in serving the payphone market for the same reason that it is a distinct market: PSPs buy only bare POTS lines, which generate less revenue than mass market lines and thus do not allow CLECs to recover their costs
  - Payphones are the quintessential POTS service—they do not require, nor benefit from, a broadband connection
  - Only basic local exchange service is needed—no vertical features
  - Contrast this with the BOC's "inter-modal" mass market where broadband and vertical services yield greater revenue
  - The result is that payphone lines produce far less revenue than mass market lines—total revenue of $22 per month is typical
  - While there is a reduced revenue opportunity, there are extra costs inherent in serving PSPs

The payphone local exchange market is a distinct market with unique impairments for CLECs (cont.)

UNE-L Service in the Payphone and Mass Markets: Cost v. Revenue

[redacted]	[redacted]			
		PSP		Mass Market
		$22.44		$46.43
BellSouth	$26.69	**-$4.25**		$19.74
SBC	$39.63	**-$17.19**		$6.80

Notes:

1. BOC cost figures are for the cost of providing service to the mass market via UNE-L and are taken from SBC and BellSouth TRO ex partes, cited in Payphone Commenters Reply Comments at 14-16 ("Reply Comments").
2. The $22.44 PSP revenue figure is the average revenue generated by a payphone line. *See* Reply Comments at 10, 13.
3. The $46.43 mass market revenue figure is the Commission's. *See* Ind. Anal. & Tech. Div., WCB, FCC, Reference Book of Rates, Price Indices, and Household Expenditures for Telephone Service (2004) at Tables 1.2 and 1.8, cited in RBOC UNE Fact Report at II-42.

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The payphone local exchange market is a distinct market with unique impairments for CLECs (cont.)

Adding a UNE-L Payphone Line to an Existing Switch Produces a Negative Margin

	Calif.	Mich.	Texas
REVENUE	$22.44	$22.44	$22.44
COSTS			
Loop	$15.96	$10.99	$17.87
Hot Cut	$3.77	$3.16	$2.82
Transport	$5.49	$2.87	$4.98
NET MARGIN	**-$2.78**	**$5.42**	**-$3.23**

Notes:

1. This net margin analysis of the cost of adding a payphone line to an existing switch *excludes* all switching, collocation, SG&A, and other overhead costs.
2. BOC cost figures are for the cost of providing service to the mass market via UNE-L and are taken from an SBC BellSouth TRO ex parte, cited in Payphone Commenters Reply Comments at 14-16. The loop rates are blended zone 2 and 3 UNE rates; the hot cut costs were amortized by SBC over 18 months; and the transport cost assumes 500 lines served from the central office by the CLEC and includes amortized non-recurring charges.

The payphone local exchange market is a distinct market with unique impairments for CLECs (cont.)

- The touchstone of impairment is "whether all potential revenues from entering a market exceed the costs of entry"
  - For payphones, the costs of serving the payphone market with UNE-L far exceed available revenues (see chart)
  - Even if the Commission finds non-impairment in the mass market, it must find impairment in the payphone market because of the revenue and cost differences

There are no intermodal/broadband alternatives for serving payphones

- Verizon: "The reality . . . is that [UNE-L] competition has been overtaken by the intermodal alternatives . . . ."
- Cable and other wireline broadband providers are not viable alternatives
- There is no viable wireless alternative for payphones
- DS-1/other enterprise market-level services are not an option
  - DS-1 service is only economical for relatively high line-count locations
  - Most payphone banks have only one line; only 2.5% have more than 3

Real world experience confirms that UNE-P is the only viable way to serve PSPs

- CLECs tried to serve PSPs through self-provisioned switching and resale, neither of which proved viable
- By contrast, today numerous CLECs provide UNE-P based service to PSPs, serving a large percentage of independent PSPs
- The competitive pressure from UNE-P-based service to PSPs also serves to keep ILEC rates down

Section 276 both reinforces and is an independent reason why the FCC must preserve UNE-P for payphones

- Section 276 directs the FCC to promote "competition among payphone service providers" and "widespread deployment of payphone services"
- Section 276 recognizes the unique role payphones play
  - 24/7/365 guaranteed access to the network across all socio-economic strata
  - Vital link for emergency communications
    - During black-outs, payphones work when wireless phones don't
  - Important national security benefits
    - Payphones played a key role during the aftermath of the 9/11 attacks

Section 276 both reinforces and is an independent reason why the FCC must preserve UNE-P for payphones (cont.)

- Section 251 unbundling analysis must factor in Section 276
  - "at a minimum"
  - *AT&T v. Iowa Utilities Board* stressed that the impairment analysis must be "rationally related to the goals of the Act"
  - *USTA II* requires a "balanc[ing] of the costs and benefits of unbundling with other considerations relevant to the Act"
  - Reducing competition in the market to provide local service to PSPs—which is the PSP's predominant cost of providing service—will accelerate the removal of payphones, contrary to the statutory mandate to "promote widespread deployment"
- Section 276 functions as a weight on the scale in favor of impairment
- Even if there is no impairment under Section 251, "at a minimum" requires the Commission to order unbundling to meet its mandate under Section 276

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